

SENATE BILL No. 1207

April 19, 2006, Introduced by Senators SWITALSKI and SCOTT and referred to the Committee on Judiciary.

A bill to amend 1953 PA 232, entitled
"Corrections code of 1953,"
by amending section 34 (MCL 791.234), as amended by 2004 PA 218.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 34. (1) Except as provided in section 34a, a prisoner
2 sentenced to an indeterminate sentence and confined in a state
3 correctional facility with a minimum in terms of years other than a
4 prisoner subject to disciplinary time is subject to the
5 jurisdiction of the parole board when the prisoner has served a
6 period of time equal to the minimum sentence imposed by the court
7 for the crime of which he or she was convicted, less good time and
8 disciplinary credits, if applicable.

1 (2) Except as provided in section 34a, a prisoner subject to
2 disciplinary time sentenced to an indeterminate sentence and
3 confined in a state correctional facility with a minimum in terms
4 of years is subject to the jurisdiction of the parole board when
5 the prisoner has served a period of time equal to the minimum
6 sentence imposed by the court for the crime of which he or she was
7 convicted.

8 (3) If a prisoner other than a prisoner subject to
9 disciplinary time is sentenced for consecutive terms, whether
10 received at the same time or at any time during the life of the
11 original sentence, the parole board has jurisdiction over the
12 prisoner for purposes of parole when the prisoner has served the
13 total time of the added minimum terms, less the good time and
14 disciplinary credits allowed by statute. The maximum terms of the
15 sentences shall be added to compute the new maximum term under this
16 subsection, and discharge shall be issued only after the total of
17 the maximum sentences has been served less good time and
18 disciplinary credits, unless the prisoner is paroled and discharged
19 upon satisfactory completion of the parole.

20 (4) If a prisoner subject to disciplinary time is sentenced
21 for consecutive terms, whether received at the same time or at any
22 time during the life of the original sentence, the parole board has
23 jurisdiction over the prisoner for purposes of parole when the
24 prisoner has served the total time of the added minimum terms. The
25 maximum terms of the sentences shall be added to compute the new
26 maximum term under this subsection, and discharge shall be issued
27 only after the total of the maximum sentences has been served,

1 unless the prisoner is paroled and discharged upon satisfactory
2 completion of the parole.

3 (5) If a prisoner other than a prisoner subject to
4 disciplinary time has 1 or more consecutive terms remaining to
5 serve in addition to the term he or she is serving, the parole
6 board may terminate the sentence the prisoner is presently serving
7 at any time after the minimum term of the sentence has been served.

8 (6) A prisoner under sentence for life, other than a prisoner
9 sentenced for life for murder in the first degree or sentenced for
10 life for a violation of section 16(5) or 18(7) or chapter XXXIII of
11 the Michigan penal code, 1931 PA 328, MCL 750.16, 750.18, and
12 750.200 to 750.212a, or section 17764(7) of the public health code,
13 1978 PA 368, MCL 333.17764, who has served 10 calendar years of the
14 sentence in the case of a prisoner sentenced for a crime committed
15 before October 1, 1992, or, except as provided in subsection (10),
16 who has served 20 calendar years of the sentence in the case of a
17 prisoner sentenced to imprisonment for life for violating or
18 conspiring to violate section 7401(2)(a)(i) of the public health
19 code, 1978 PA 368, MCL 333.7401, who has another conviction for a
20 serious crime, or, except as provided in subsection (10), who has
21 served 17-1/2 calendar years of the sentence in the case of a
22 prisoner sentenced to imprisonment for life for violating or
23 conspiring to violate section 7401(2)(a)(i) of the public health
24 code, 1978 PA 368, MCL 333.7401, who does not have another
25 conviction for a serious crime, or who has served 15 calendar years
26 of the sentence in the case of a prisoner sentenced for a crime
27 committed on or after October 1, 1992, is subject to the

1 jurisdiction of the parole board and may be released on parole by
2 the parole board, subject to the following conditions:

3 (a) At the conclusion of 10 calendar years of the prisoner's
4 sentence and thereafter as determined by the parole board until the
5 prisoner is paroled, discharged, or deceased, and in accordance
6 with the procedures described in subsection (7), 1 member of the
7 parole board shall interview the prisoner. **THE PAROLE BOARD SHALL**
8 **CONSIDER THE PRISONER FOR RELEASE ON PAROLE BASED ON THE CRITERIA**
9 **USED TO EVALUATE ALL OTHER PRISONERS, INCLUDING THE CALCULATION OF**
10 **A PAROLE GUIDELINES SCORE PURSUANT TO SECTION 33E. THE FACT THAT**
11 **THE PRISONER IS SERVING A SENTENCE OF LIFE IMPRISONMENT SHALL NOT**
12 **NEGATIVELY AFFECT THE PRISONER'S PAROLE GUIDELINES SCORE.** The
13 interview schedule prescribed in this subdivision applies to all
14 prisoners to whom this subsection is applicable, regardless of the
15 date on which they were sentenced.

16 (b) In addition to the interview schedule prescribed in
17 subdivision (a), the parole board shall review the prisoner's file
18 at the conclusion of 15 calendar years of the prisoner's sentence
19 and every 5 years thereafter until the prisoner is paroled,
20 discharged, or deceased. A prisoner whose file is to be reviewed
21 under this subdivision shall be notified of the upcoming file
22 review at least 30 days before the file review takes place and
23 shall be allowed to submit written statements or documentary
24 evidence for the parole board's consideration in conducting the
25 file review.

26 (c) A decision to grant or deny parole to a prisoner so
27 sentenced shall not be made until after a public hearing held in

1 the manner prescribed for pardons and commutations in sections 44
2 and 45. Notice of the public hearing shall be given to the
3 sentencing judge, or the judge's successor in office, and parole
4 shall not be granted if the sentencing judge, or the judge's
5 successor in office, files written objections to the granting of
6 the parole within 30 days of receipt of the notice of hearing. The
7 written objections shall be made part of the prisoner's file.

8 (d) A parole granted under this subsection shall be for a
9 period of not less than 4 years and subject to the usual rules
10 pertaining to paroles granted by the parole board. A parole ordered
11 under this subsection is not valid until the transcript of the
12 record is filed with the attorney general whose certification of
13 receipt of the transcript shall be returnable to the office of the
14 parole board within 5 days. Except for medical records protected
15 under section 2157 of the revised judicature act of 1961, 1961 PA
16 236, MCL 600.2157, the file of a prisoner granted a parole under
17 this subsection is a public record.

18 (e) A parole shall not be granted under this subsection in the
19 case of a prisoner who is otherwise prohibited by law from parole
20 consideration. In such cases the interview procedures in section 44
21 shall be followed.

22 (7) An interview conducted under subsection (6)(a) is subject
23 to both of the following requirements:

24 (a) The prisoner shall be given written notice, not less than
25 30 days before the interview date, stating that the interview will
26 be conducted.

27 (b) The prisoner may be represented at the interview by an

1 individual of his or her choice. The representative shall not be
2 another prisoner. A prisoner is not entitled to appointed counsel
3 at public expense. The prisoner or representative may present
4 relevant evidence in favor of holding a public hearing as described
5 in subsection (6) (b).

6 (8) In determining whether a prisoner convicted of violating
7 or conspiring to violate section 7401(2) (a) (i) of the public health
8 code, 1978 PA 368, MCL 333.7401, and sentenced to imprisonment for
9 life before October 1, 1998 is to be released on parole, the parole
10 board shall consider all of the following:

11 (a) Whether the violation was part of a continuing series of
12 violations of section 7401 or 7403 of the public health code, 1978
13 PA 368, MCL 333.7401 and 333.7403, by that individual.

14 (b) Whether the violation was committed by the individual in
15 concert with 5 or more other individuals.

16 (c) Any of the following:

17 (i) Whether the individual was a principal administrator,
18 organizer, or leader of an entity that the individual knew or had
19 reason to know was organized, in whole or in part, to commit
20 violations of section 7401 or 7403 of the public health code, 1978
21 PA 368, MCL 333.7401 and 333.7403, and whether the violation for
22 which the individual was convicted was committed to further the
23 interests of that entity.

24 (ii) Whether the individual was a principal administrator,
25 organizer, or leader of an entity that the individual knew or had
26 reason to know committed violations of section 7401 or 7403 of the
27 public health code, 1978 PA 368, MCL 333.7401 and 333.7403, and

1 whether the violation for which the individual was convicted was
2 committed to further the interests of that entity.

3 (iii) Whether the violation was committed in a drug-free school
4 zone.

5 (iv) Whether the violation involved the delivery of a
6 controlled substance to an individual less than 17 years of age or
7 possession with intent to deliver a controlled substance to an
8 individual less than 17 years of age.

9 (9) Except as provided in section 34a, a prisoner's release on
10 parole is discretionary with the parole board. The action of the
11 parole board in granting a parole is appealable by the prosecutor
12 of the county from which the prisoner was committed or the victim
13 of the crime for which the prisoner was convicted. The appeal shall
14 be to the circuit court in the county from which the prisoner was
15 committed, by leave of the court.

16 (10) If the sentencing judge, or his or her successor in
17 office, determines on the record that a prisoner described in
18 subsection (6) sentenced to imprisonment for life for violating or
19 conspiring to violate section 7401(2)(a)(i) of the public health
20 code, 1978 PA 368, MCL 333.7401, has cooperated with law
21 enforcement, the prisoner is subject to the jurisdiction of the
22 parole board and may be released on parole as provided in
23 subsection (6), 2-1/2 years earlier than the time otherwise
24 indicated in subsection (6). The prisoner is considered to have
25 cooperated with law enforcement if the court determines on the
26 record that the prisoner had no relevant or useful information to
27 provide. The court shall not make a determination that the prisoner

1 failed or refused to cooperate with law enforcement on grounds that
2 the defendant exercised his or her constitutional right to trial by
3 jury. If the court determines at sentencing that the defendant
4 cooperated with law enforcement, the court shall include its
5 determination in the judgment of sentence.

6 (11) An individual convicted of violating or conspiring to
7 violate section 7401(2)(a)(ii) or 7403(2)(a)(ii) of the public health
8 code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003
9 is eligible for parole after serving the minimum of each sentence
10 imposed for that violation or 10 years of each sentence imposed for
11 that violation, whichever is less.

12 (12) An individual convicted of violating or conspiring to
13 violate section 7401(2)(a)(iii) or 7403(2)(a)(iii) of the public health
14 code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003
15 is eligible for parole after serving the minimum of each sentence
16 imposed for that violation or 5 years of each sentence imposed for
17 that violation, whichever is less.

18 (13) An individual convicted of violating or conspiring to
19 violate section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public health
20 code, 1978 PA 368, MCL 333.7401 and 333.7403, before March 1, 2003
21 who is sentenced to a term of imprisonment that is consecutive to a
22 term of imprisonment imposed for any other violation of section
23 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i) to (iv) is eligible for
24 parole after serving 1/2 of the minimum sentence imposed for each
25 violation of section 7401(2)(a)(iv) or 7403(2)(a)(iv). This
26 subsection does not apply if the sentence was imposed for a
27 conviction for a new offense committed while the individual is on

1 probation or parole.

2 (14) The parole board shall provide notice to the prosecuting
3 attorney of the county in which the individual was convicted before
4 granting parole to the individual under subsection (11), (12), or
5 (13).

6 (15) As used in this section:

7 (a) "Serious crime" means violating or conspiring to violate
8 article 7 of the public health code, 1978 PA 368, MCL 333.7101 to
9 333.7545, ~~that is~~ punishable by imprisonment for more than 4
10 years, or an offense against a person in violation of section 83,
11 84, 86, 87, 88, 89, 316, 317, 321, 349, 349a, 350, 397, 520b, 520c,
12 520d, 520g, 529, 529a, or 530 of the Michigan penal code, 1931 PA
13 328, MCL 750.83, 750.84, 750.86, 750.87, 750.88, 750.89, 750.316,
14 750.317, 750.321, 750.349, 750.349a, 750.350, 750.397, 750.520b,
15 750.520c, 750.520d, 750.520g, 750.529, 750.529a, and 750.530.

16 (b) "State correctional facility" means a facility that houses
17 prisoners committed to the jurisdiction of the department, and
18 includes a youth correctional facility operated under section 20g
19 by the department or a private vendor.